

17 LOS ANGELES, CALIFORNIA
MONDAY, OCTOBER 25, 2010

1 APPEARANCES:

2 ON BEHALF OF THE PLAINTIFF:

3 FRANKLIN S. ADLER
4 ATTORNEY AT LAW
5 BEVERLY HILLS LAW BUILDING
6 424 SOUTH BEVERLY DRIVE
7 BEVERLY HILLS, CALIFORNIA 90212

8 ON BEHALF OF THE DEFENDANT:

9 ANDRÉ BIROTE, JR.
10 UNITED STATES ATTORNEY
11 LEON WEIDMAN
12 CHIEF, CIVIL DIVISION
13 BY: DAVID DE JUTE
14 ASSISTANT UNITED STATES ATTORNEY
15 300 LOS ANGELES STREET
16 LOS ANGELES, CALIFORNIA 90012

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I N D E X

2 CV 10-3996-SVW

OCTOBER 25, 2010

3 HEARING: MOTION TO DISMISS CASE

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1 LOS ANGELES, CALIFORNIA; MONDAY, OCTOBER 25, 2010; 1:46 P.M.

2 THE CLERK: ITEM 12, CV 10-3996-SVW, EUGENE EVAN
3 BAKER VERSUS ERIC H. HOLDER, JR.

4 COUNSEL, PLEASE STATE YOUR APPEARANCES.

5 MR. ADLER: FRANKLIN S. ADLER, A-D-L-E-R, ON BEHALF
6 OF PLAINTIFF.

7 THE COURT: PLAINTIFF IS ON THE OTHER SIDE.

8 MR. ADLER: I BEG YOUR PARDON, YOUR HONOR.

9 MR. DE JUTE: GOOD MORNING, YOUR HONOR. GOOD
10 AFTERNOON, YOUR HONOR.

11 DAVID DE JUTE, ASSISTANT U.S. ATTORNEY, FOR THE
12 DEFENDANT.

13 THE COURT: DO THE PARTIES HAVE ANYTHING TO ADD TO
14 THEIR ARGUMENTS? THEY WERE PRETTY WELL OUTLINED IN THE
15 PAPERS.

16 ANYTHING ELSE?

17 MR. DE JUTE: NOTHING FROM THE GOVERNMENT, YOUR
18 HONOR.

19 MR. ADLER: YES, I WOULD, YOUR HONOR.

20 THE COURT: WHAT IS THAT?

21 MR. ADLER: JUST FOR A BRIEF MOMENT.

22 THE LAST TIME I WAS IN YOUR COURT IT WAS THE OTHER
23 SIDE, THE GOVERNMENT, THAT HAD THE UNITED STATES SUPREME COURT
24 CASE ON THEIR SIDE. IT WAS A CIVIL RIGHTS CASE. AND THEY HAD
25 HECK VERSUS HUMPHREY, WHICH THE COURT FOUND TO BE THE DECIDING

1 ISSUE.

2 THIS IS A CASE WHERE I HAVE THE UNITED STATES SUPREME
3 COURT CASE ON MY SIDE AND TWO NINTH CIRCUIT CASES ON MY SIDE.

4 I AM NOT ASKING THE COURT TO RENDER A RULING IN
5 OPPOSITION TO THE JENNINGS VERSUS MUKASEY CASE MERELY BECAUSE I
6 DISAGREE WITH IT. I REQUEST THAT RULING BECAUSE THE JENNINGS
7 CASE ANALYZED CALIFORNIA PENAL CODE SECTION 1203.4 USING A
8 MEASURING STICK THAT HAD BEEN REJECTED BY CONGRESS IN 1985.

9 THERE IS NO REQUIREMENT UNDER THE RELEVANT STATUTES
10 INVOLVED IN THIS CASE THAT A STATE EXPUNGEMENT STATUTE ADDRESS
11 CONVICTIONS UNDER DIFFERENT CIRCUMSTANCES, PRIOR ABILITY OF
12 CONVICTIONS, OR WHETHER A PERSON HAS TO ANNOUNCE THE PRIOR
13 CONVICTION IN THE FUTURE WHEN APPLYING FOR STATE LICENSES.
14 THERE IS NONE OF THAT.

15 ALL THAT THE FEDERAL LAW REQUIRES IS THAT THE
16 INSTRUMENT OF SET ASIDE, THE INSTRUMENT OF DISMISSAL, EITHER
17 CONTAIN OR NOT CONTAIN ANY RESTRICTION UPON FUTURE FIREARM
18 POSSESSION BY A -- BY THE INDIVIDUAL INVOLVED. OUR ORDER OF
19 SET ASIDE CONTAINS NO SUCH RESTRICTION.

20 AND I RESPECTFULLY SUBMIT THAT UNDER HERRON AND UNDER
21 LASKY, THAT IS ALL THAT THE COURT SHOULD LOOK AT. THAT IS ALL
22 THAT IS REQUIRED. AND THAT THE MOTION SHOULD BE DENIED.

23 THANK YOU, YOUR HONOR.

24 THE COURT: THE MOTION IS GRANTED.

25 AND THE COURT WILL ISSUE ITS ORDER.

1 THANK YOU.

2 MR. DE JUTE: THANK YOU, YOUR HONOR.

3 (PROCEEDINGS ADJOURNED AT 1:48 P.M.)

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3 REPORTER'S CERTIFICATE

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6 I HEREBY CERTIFY THAT THE FOREGOING IS A CORRECT
7 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED
8 MATTER.

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DATE:

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14 MARGARET JEAN BABYKIN, CSR NO. 10466

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